



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: John Brown E & C
File: B-243247
Date: July 5, 1991

Gordon R. Gilmore for the protester,
Frank G. Hunter for Doss Aviation, Inc., an interested party,
Lt. Col. William J. Holland and Capt. Peter J. Seebeck, Esq.,
Department of the Air Force, for the agency.
Catherine M. Evans, Esq., and John M. Melody, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

1. Decision to award to higher-priced offeror rather than protester was unobjectionable where agency reasonably concluded in cost/technical tradeoff that awardee's proposal, which offered more personnel than protester's and was rated more highly in areas of management and experience, represented a significant performance advantage that outweighed its 2 percent cost premium.
2. Protest that agency improperly relied on undisclosed criteria in technical evaluation of proposals is denied where matters considered in evaluation were reasonably related to the stated evaluation factors.
3. Protest that agency improperly discussed with awardee areas of its proposal that were not deficient without conducting similar discussions with protester, is denied where record shows that discussions only concerned deficiencies in proposal.

DECISION

John Brown E & C protests the award of a contract to Doss Aviation, Inc. under request for proposals (RFP) No. F41685-90-R-0061, issued by the Department of the Air Force for the fuels management function at Laughlin Air Force Base, Texas. Brown principally alleges that the Air Force improperly awarded the contract to a higher-priced offeror even though Brown's lower-priced proposal exceeded the RFP requirements.

We deny the protest.

The RFP required offerors to submit fixed prices for operation of fuel storage and distribution services on a monthly basis for a base period of 6 months and four 1-year option periods. The RFP provided that award would be made to the firm submitting the offer considered most advantageous to the government in terms of technical and price factors. In this regard, the RFP informed offerors that award could be made to other than the low-priced or technically superior offeror. Four technical evaluation factors were to be considered, in descending order of importance: comprehension of requirements, organization and staffing, contract management, and experience. For each factor, proposals were to receive a color-coded rating: blue (exceptional), green (acceptable), yellow (marginal), or red (unacceptable).

Eleven firms submitted initial proposals by the closing date. After review of initial proposals and two requests for clarifications from all offerors, seven proposals, including those of Doss and Brown, were determined to be in the competitive range; the contracting officer requested best and final offers (BAFO) from those firms. As Brown's initial proposal was not considered deficient in any areas, Brown's BAFO request stated that no proposal revisions were necessary. Accordingly, Brown did not revise its technical proposal with its BAFO. Doss's BAFO request noted several technical proposal deficiencies; Doss addressed all of these areas in its BAFO. In the BAFO evaluation, both Brown and Doss received exceptional technical ratings overall. Brown offered a price of \$4,714,217, and Doss \$4,820,400. Although Doss's price was about 2 percent higher than Brown's, the evaluation team noted that Doss offered two more personnel than Brown, and that Doss had an additional labor pool available at a nearby airfield in the event of contingency needs. The evaluation team therefore concluded that Doss's proposal represented the most advantageous combination of technical merit and price. The source selection authority agreed, and made award to Doss; this protest followed.

Brown contends that, as both its and Doss's proposals exceeded the government's requirements and received exceptional ratings, the proposals were essentially equal, and price therefore should have been the deciding factor for award. Brown asserts that the Air Force instead improperly relied on unstated evaluation criteria such as extra personnel and location of contingency labor pools to select between the two superior proposals. Brown also alleges that the Air Force improperly may have engaged in technical leveling with Doss by discussing with it areas of its proposal that were not deficient, thus helping Doss to bring its proposal up to the level of other proposals.

The determination of the relative merits of proposals is primarily a matter of agency discretion which we will not disturb unless it is shown to be unreasonable or inconsistent with the stated evaluation criteria. Systems & Processes Eng'g Corp., B-234142, May 10, 1989, 89-1 CPD ¶ 441. A protester's mere disagreement with the agency's judgment does not render that judgment unreasonable. Id. Further, agency officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results; cost/technical tradeoffs may be made subject only to the test of rationality and consistency with the established evaluation factors. Institute of Modern Procedures, Inc., B-236964, Jan. 23, 1990, 90-1 CPD ¶ 93.

Based upon our review of the record, we find that the agency's decision to make award to Doss was reasonable and consistent with the evaluation criteria specified in the RFP. Although both Brown's and Doss's proposals were termed exceptional overall, Doss's proposal was rated superior to Brown's within this adjectival category. In this regard, while Brown's overall rating reflected exceptional ratings under the heavily weighted comprehension of requirements and organization and staffing factors, Brown's proposal received only acceptable ratings under the contract management and experience factors.^{1/} Although these latter two factors were accorded less weight than the former two, in contrast, Doss earned exceptional ratings in all four categories.

Brown is correct that the Air Force's evaluation was based in part on its finding that Doss's proposal provided better assurance of uninterrupted service, as it offered two more personnel than Brown's proposal as well as access to additional personnel at nearby Hondo Airfield. We do not agree with Brown, however, that these were unstated evaluation criteria. With regard to the number of personnel Doss proposed, Brown appears to be arguing that the RFP did not advise offerors that those who proposed "more than adequate" personnel would receive higher scores. However, the RFP did provide for evaluation of proposed manning levels, so it should have been clear to all offerors that proposed levels

^{1/} The record contains two different evaluation summaries for Brown, one of which shows exceptional ratings in all four categories. The agency explains that Brown's proposal was one of the first to be evaluated before the evaluation team recessed for the Christmas and New Year holidays. When the evaluators reconvened after the holidays, the first few proposals, including Brown's, were reevaluated to ensure consistency of the results. Brown's first evaluation, in which it received exceptional ratings in all four categories, thus was not considered in the award decision.

would be included in the comparative evaluation process. While Brown's proposal offered one more person than the agency estimated was required, Doss's proposal offered three more; we think it was reasonable, and consistent with the indication that manning levels would be evaluated, for the Air Force to give a higher rating to a proposal offering more manpower. By the same token, in view of the RFP requirement for adequate manning levels, we think the Air Force reasonably considered the proximity of Doss's reserve personnel in evaluating Doss's ability to provide uninterrupted service. Again, both of these considerations clearly related to the offerors' proposed manning. See Hoffman Mgmt., Inc., 69 Comp. Gen. 579 (1990), 90-2 CPD ¶ 15.

In determining whether award to a higher-priced, higher-technically-rated offeror was proper, we will accord due weight to the agency's judgment concerning the significance of the difference in technical merit of offers and whether that difference is sufficiently significant to outweigh the price difference. See Institute of Modern Procedures, Inc., B-236964, supra. Here, the Air Force found Doss's proposal technically superior to Brown's under the management and experience factors. In addition, the Air Force determined that Doss's proposal, with its two additional personnel and availability of backup personnel, provided greater assurance of uninterrupted service than Brown's proposal. The Air Force concluded that Doss's superiority in these areas was sufficient to offset the firm's 2 percent higher price. Thus, the agency obviously weighed the relative advantages of Doss's superior technical proposal and Brown's lower price, as it is required to do in making a cost/technical tradeoff. We think the reasons set forth by the agency provide a reasonable basis for its selection of Doss.

The record does not support Brown's allegation of technical leveling. The record shows that the Air Force noted five deficiencies in Doss's initial proposal, and pointed out these deficiencies to Doss in written discussion questions. Under the comprehension of requirements factor, the Air Force noted three deficiencies: first, it was not clear to the Air Force from Doss's manloading charts that it had projected enough personnel to cover all the tasks required under the RFP (Doss responded by offering five additional personnel). Second, it did not appear to the Air Force that Doss had allowed enough time in its start-up schedule for training personnel (Doss adjusted its start-up schedule to include additional training time). Third, the Air Force found that Doss's performance plan did not provide enough information about how it planned to accomplish the required tasks (Doss responded with a substantially more detailed performance plan). Under the organization and staffing factor, the Air Force advised Doss that its proposed project manager did not meet the RFP

requirements. (Doss agreed, and proposed a new project manager.) Finally, under the experience factor, the Air Force informed Doss that it had failed to submit accident rate data in the required format (Doss corrected the problem by submitting the data). There is no indication that discussions with Doss covered any other areas. We conclude that the Air Force did not improperly assist Doss in bringing its proposal up to the level of Brown's proposal. See United Eng'rs & Constructors Inc., Stearns-Roger Div., B-240691; B-240691.2, Dec. 14, 1990, 90-2 CPD ¶ 490.

Brown alleges that Doss never intended to hire the project manager it proposed in response to the Air Force's deficiency notice, as evidenced by the alleged fact that, 2 days after award, Doss offered the position to Brown's proposed project manager. Whether or not Doss intended to perform the contract using the proposed project manager, whom the agency found to be acceptable, it is clear from the record that Brown did not suffer any competitive disadvantage as a result of Doss's action, as Doss's substitute manager had been determined by the agency to have been acceptable during the evaluation of Brown's proposal. To the extent that Brown objects to one of its employees being recruited by a competitor, its arguments are without merit; there is nothing unusual or inherently improper in an offeror's hiring a competitor's personnel. A.B. Dick Co., B-233142, Jan. 31, 1989, 89-1 CPD ¶ 42.

The protest is denied.


for James F. Hinchman
General Counsel